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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/733,900	12/12/2000	Carlos O. Pinzon	05725.0595-00	5474

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EXAMINER

LAMM, MARINA

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 04/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/733,900	Applicant(s) PINZON ET AL.	
	Examiner Marina Lamm	Art Unit 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-347 is/are pending in the application.
- 4a) Of the above claim(s) 1-320,323,324,326-328,331-333,336 and 339-346 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 321,322,325,329,330,334,335,337,338 and 347 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Acknowledgment is made of the amendment filed 11/17/03. Claims pending are 1-347. Claims 1-320, 323, 324, 326-328, 331-333, 336 and 339-346 have been withdrawn from consideration as directed to non-elected invention. Claim 347 is new.

Election/Restrictions

1. This application contains claims 1-320, 323, 324, 326-328, 331-333, 336 and 339-346 drawn to an invention nonelected with traverse in response filed 5/7/03. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.
2. The Applicants are invited to submit a claim directed to elected species.

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. The rejection of Claims 321, 322, 325, 329, 330, 334, 335, 337 and 338 under 35 U.S.C. 103(a) as being unpatentable over Pavlin et al. (US 5,783,657) in view of Murphy et al. (US 6,423,324), "McCutcheon's Emulsifiers and Detergents" (vol. 1, pp. 272-273, 1993) and Seidel et al. (US 5,830,483) is maintained for the reasons of the record. New Claim 347 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of references cited above.

Response to Arguments

5. Applicant's arguments filed 11/17/03 have been fully considered but they are not persuasive.

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In response to the Applicant's argument that "Murphy actually teaches away from selecting a cationic surfactant, let alone an oil-soluble cationic surfactant as presently claimed," it is noted that Murphy explicitly teaches using cationic surfactants in combination with polyamide gellants as discussed previously. The teaching of non-ionic surfactants as preferred surfactants cannot be considered as "teaching away" from using other types of disclosed surfactants, including cationic surfactants. The reference's teaching is not limited to examples and/or preferred embodiment and must be considered as a whole. When considered as a whole, the Murphy reference suggests the desirability of using surfactants, including cationic surfactants, in combination with polyamide structurants in cosmetic compositions for modifying viscosity and improving the texture of the composition. See col. 9, lines 1-5; col. 10, lines 46-52. Further, the claimed oil-soluble cationic surfactants are known in the art of cosmetic compositions as evidenced by Seidel et al. The courts have held that selection of a known material based on its suitability for its intended use is obvious absent a clear showing of unexpected results attributable to the applicant's specific selection. See e.g., *In re Leshin*, 227 F.2d 197, 125 USPQ 416 (CCPA 1960).

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory

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period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marina Lamm whose telephone number is (571) 272-0618.

The examiner can normally be reached on Mondays, Wednesdays and Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page, can be reached at (571) 272-0602.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

THURMAN K. PAGE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600